No. 73-1737

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In the Supreme Court of the United States

OCTOBER TERM, 1974

UNITED STATES OF AMERICA, APPELLANT

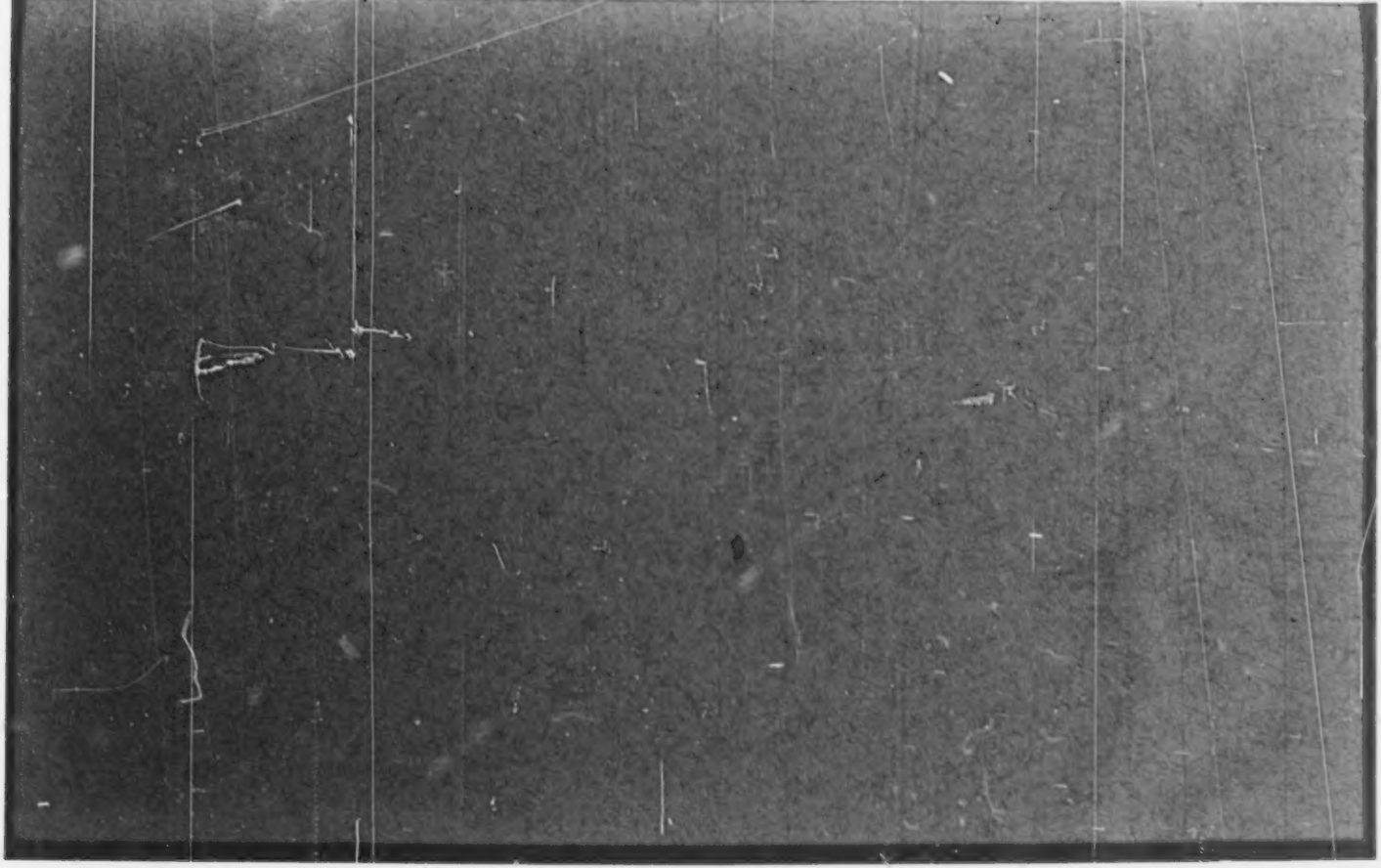
v.

MICHIGAN NATIONAL CORPORATION, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

REPLY MEMORANDUM FOR THE UNITED STATES

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530



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The United States files this reply memorandum to apprise the Court of events occurring subsequent to the filing of its jurisdictional statement which demonstrate the need for the relief therein requested.

In our jurisdictional statement, we argued that the district court, by dismissing without prejudice the government's Section 7 (15 U.S.C. 18) complaints rather than staying proceedings on them pending the Comptroller's decision on the phantom merger applications, improperly created a risk that the government would be barred on jurisdictional grounds from bringing new suits within thirty days of the Comptroller's approval (J.S. 7-10). On May 16, 1974, the Comptroller did approve the phantom mergers between the Central Bank, N.A. and C. Bank and between Valley National Bank and V. Bank, and on June 13, 1974, the United States filed new Sec-

tion 7 complaints attacking those merger and acquisition transactions.[1]

In their motion to affirm (p. 9), appellees argued that "suit brought after favorable action by the Comptroller, within the statutory period provided in the Bank Merger Act, would be timely," and further "suppose[d] that these filings moot these appeals, pro tanto" (p. 7).

About a month after filing the motion to affirm, however, appellees filed in the district court a motion to dismiss the government's latest complaints "because of pendency of prior action." The "prior action" consists of the dismissed complaints and the pending appeal to this Court. The district court has taken the motion under advisement after receiving briefs and hearing oral argument.

Appellees' motion to dismiss not only contradicts their earlier suggestion that the filing of the new complaints mooted the government's appeal, but also shows the need for reversal of the order dismissing the original complaints. For if appellees were to prevail on that motion and this Court were to affirm the dismissals of the original complaints, no government complaint against these acquisitions would be outstanding. Because more than 30 days have passed since the approv-

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[1]In one complaint, the United States named as defendants Michigan National Corporation, Michigan National Bank, Central Bank, N.A., and C. Bank, National Association; in the other, the defendants are Michigan National Corporation, Michigan National Bank, Valley National Bank of Saginaw, and V. National Bank. The complaints are reproduced in appellees' Motion To Affirm, pp. 11-22. The Comptroller has not acted on the other two merger applications.

als of both the Federal Reserve Board and the Comptroller, a third government complaint would be barred by the 30-day limitations of the Bank Merger Act and the Bank Holding Company Act. In that event, the only recourse for the government would be another appeal to this Court from the district court's dismissal of the complaints filed in June 1974. In the interests of sound judicial administration, this Court should avoid the possibility of such confused and unnecessary proceedings by vacating the district court's order of dismissal with directions to reinstate the initial complaints.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1974.